

**REMARKS**

Claims 1-8, 10, and 27 are all the claims currently under examination in the present application. New claim 27 has been added and no new matter has been added.

It is noted that the claims amendments are made only for pointing out the claimed invention more particularly, and not for distinguishing the invention over the prior art, narrowing the claims, or for statutory requirements for patentability. Further Applicant specifically states that no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Applicant gratefully acknowledges the Examiner's indication that claims 2, 4, 6, 8, and 10 are allowed and that claim 9 would be allowable if rewritten in independent form. While Applicant completely disagrees, in an amendment filed June 15, 2009, Applicant amended independent claim 1 to incorporate allowable claim 9, in order to expedite prosecution. However, upon further reflection that the prior art clearly did not teach or suggest previous claim 1 (i.e., prior to the June 15, 2009 amendment) by this amendment, Applicants submits new claim 27 containing the same scope and subject matter of previously rejected claim 1. Thus, there has been no disclaimer of the subject matter and the patentability of previous claim 1. Applicant submits that all pending claims, including new claim 27, are allowable.

**Claims 1, 3, 5, and 7** stand rejected under 35 U.S.C. §103(a) over the Applicant's Admitted Prior Art (hereinafter the AAPA) in view of Nara (US Patent No. 5,978,414).

On page 2 of the Office Action, the Examiner alleges that it would have been obvious to combine the AAPA with Nara to teach the claimed invention as recited in claims 1, 3, 5, and 7. While Applicant has amended claim 1 to include the subject matter of claim 9,

Applicant submits that new claim 27 is allowable over the AAPA and Nara.

## **I. THE CLAIMED INVENTION**

An exemplary aspect of the claimed invention, as recited in new independent claim 27, is directed to mobile radio equipment, having a radio transmitter/ receiver for transmitting/ receiving radio data, a transmission unit for converting the received data received by the radio transmitter/ receiver, an application unit for executing applications, a decoder for decoding the data output from the transmission unit, a memory for storing the decoded data output from the decoder, an input/ output section for inputting/ outputting the decoded data output from the decoder, a load data output section for outputting the decoded data output from the decoder as load data, a load data input section for inputting the decoded data output from the decoder as load data, a judge section for judging the load data on a preset threshold value, and a transmission controller for controlling transmission rate based on a judgment made by the judge section.

In conventional mobile radio equipment, when establishing communication, the mobile radio equipment informs a radio base station of the maximum transmission rate at which it can receive data from the base station. Subsequently, the radio base station adjusts resources to allocate resources to the mobile radio equipment newly connected thereto. After that, the radio base station determines the transmission rate for the mobile radio equipment, and enters into communication with the radio equipment.

In the radio communication system of the conventional technique, a radio line is operated at a data transfer rate or communication rate which can be selected from predetermined values regardless of whether or not communication has already been

established. A radio communication terminal changes the communication rate in response to a request from a radio base station. The radio base station informs a correspondent terminal as to the change of the communication rate.

However, in the above-described conventional techniques, the resources of the radio base station are limited, and maximum efficiency cannot be achieved. Moreover, although the mobile radio equipment requests the maximum rate of data transmission, it might not have a decoding capability commensurate with the maximum transmission rate, even if its radio transmission function is sufficient to receive data normally at the maximum rate.

The present invention, on the other hand, provides mobile radio equipment and a method of controlling transmission rate for the mobile radio equipment based on whether load data exceeds a preset value.

## **II. THE ALLEGED PRIOR ART REFERENCES**

On page 2 of the Office Action, the Examiner alleges that it would have been obvious to combine the AAPA with Nara to teach the claimed invention as recited in claims 1, 3, 5, and 7. While Applicant has previously amended claim 1, Applicant submits that new claim 27 has been added to contain the same subject matter and limitations as the rejected, previous claim 1.

To establish a prima facie case of obviousness, several basic criteria must be met. First, rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness (*In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006) cited with approval in *KSR Int'l. v. Teleflex, Inc.*, 127 S.Ct. 1727 (2007)). In addition, the prior art

reference (or references when combined) must still teach or suggest all the claim limitations.

*In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

Applicants respectfully submit that Nara does not teach or suggest “a load data input section for inputting the decoded data output from the decoder as load data,” “a load data output section for outputting the decoded data output from the decoder as load data,” “a judge section for judging the load data on a preset threshold value” and “a transmission controller for controlling transmission rate based on a judgment made by the judge section,” as recited in independent claim 27.

Contrary to the Examiner’s allegation, Nara does not “control” a transmission rate based on a judgment of a transmission rate. Instead, Nara is directed to determining a transmission rate based on candidate transmission rates. In particular, receiver receives communications at transmission rates which vary in accordance with a selection made by the transmitter among a set of predetermined transmission rates, such as, for example, 1.2 kbps, 2.4 kbps, 4.8 kbps, and 9.6 kbps. *See* Nara, Col. 8, Lines 15-22. As a result of these varying candidate transmission rates, Nara determines which candidate rate is being utilized to determine how reliable each candidate rate is. The result of determining the transmission rate is that Nara determines whether the threshold value for reliability has been exceeded for the tested particular transmission rate. That is, a determination is made at each frame concerning the reliability of the received data. *See* Nara, Col. 9, Lines 31-40 where a “go no go” determination is made.

That is, contrary to the Examiner, Nara operates completely differently than the claimed invention. Instead of “a transmission controller for controlling transmission rate based on a judgment made by the judge section,” as recited in independent claim 27, Nara

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uses the transmission rate to determine a reliability information of data and does not control the transmission rate thereof. That is, the Nara reference is erroneously applied and does not make up for the AAPA's admitted deficiencies.

Accordingly, Applicant submits that claim 27 is in condition for allowance because the alleged combination of Nara and the AAPA fails to teach or suggest every element as recited within claim 27.

Therefore, Applicant respectfully requests the Examiner to reconsider and withdraw this rejection.

### **III. FORMAL MATTERS AND CONCLUSION**

In view of the foregoing, Applicant submits that claims 1-8, 10 and 27, all the claims presently under examination in the application, are patentably distinct over the prior art of record and are allowable, and that the application is in condition for allowance. Such action would be appreciated.

Moreover, Applicant requests rejoinder of the withdrawn claims.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned attorney at the local telephone number listed below to discuss any other changes deemed necessary for allowance in a telephonic or personal interview.

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The Commissioner is authorized to charge any deficiency in fees, including extension of time fees, or to credit any overpayment in fees to Attorney's Deposit Account No. 50-0481.

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Respectfully Submitted,

  
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